Thus, Applicant incorporates herein by reference the still valid "REMARKS" presented in Applicant's Amendment filed on February 17, 2005, and respectfully asks the Examiner **carefully** to reconsider (and to withdraw) the rejection under 35 U.S.C. § 103(a).

While Applicant realizes that the question of what would have been obvious to one of ordinary skill in the art from Billstöm's disclosure is a very subjective one about which honest persons can disagree, Applicant respectfully submits that Examiner Tran, in spite of his very detailed analysis of passages in Billström's disclosure, has read too much into Billström's disclosure, and has reconstructed Billström's disclosure, with hindsight knowledge of Applicant's own disclosure, to conclude that the subject matter of each of claims 1-6 would have been obvious at the time Applicant's invention was made. Applicant also respectfully submits that the Examiner's revised interpretation of passages of Billström does not answer Applicant's arguments appearing on pages 5-8 of the Amendment filed on February 17, 2005.

To reiterate, Applicant again emphasizes that a primary difference between Billström's and Applicant's claimed invention is that, in the invention, it is **unnecessary** to perform the modulation choice for each terminal by measuring the C/I in predefined conditions as shown in Figures 4A and 4B of Billström. Examiner Tran's argument (with respect to independent claims 1 and 6) is that "determining size and location of at least one domain in said cell..." would have been obvious (unpatentable) over Billström's disclosure since measuring the C/I ratio for each terminal will also result in zones in which the "same modulation type" will be used; however, Applicant must respectfully disagree with the Examiner's conclusory statement of obviousness that Applicant's claimed mathematical determination of zones would have been obvious from

Billström's disclosure with regard to the zones based on C/I measurements for the different terminals.

Indeed, when mathematically determining a zone as in the present invention, Applicant does not need to know the positions of the terminals, but needs to know only the location of the base stations. The calculation is performed independently of the real terminal number and location. As a result, Applicant's claimed "method" and "system" (claims 1 and 6) avoid the requirement for a large number of C/I measurements to determine the modulation to be used; instead, only the position of a terminal, combined with the obtained zones, is required to determine the modulation to apply.

Thus, Applicant respectfully submits that the difference between Billström's teaching and Applicant's invention would not have been *prima facie* obvious, and that Applicant's claimed invention provides the advantage (described just above) over Billström's teaching.

Therefore, Applicant respectfully requests the Examiner to reconsider and withdraw the rejection under 35 U.S.C. § 103(a), and to find the application to be in condition for allowance with claims 1-6.

REQUEST FOR INTERVIEW

However, if for any reason the Examiner feels that the application is not now in condition for allowance, Examiner Tran is respectfully requested to **call the undersigned attorney** to discuss any unresolved issues and to expedite the disposition of the application. In particular, Applicant sincerely wishes to **avoid an appeal** in this case, whereby, after the Examiner's reconsideration, if the case is still not considered to be in condition for allowance, Applicant

would like to have the opportunity to discuss with the Examiner any claim amendments which might render the claims allowable. That is, it would be helpful to Applicant in the prosecution of this application to know whether the Examiner feels that there is nothing patentable (non-obvious) in Applicant's **disclosure**, or whether certain claim amendments or additional technical analysis of Billström would make the claims allowable.

Applicant thanks the Examiner for the initialed copy of the Form PTO-1449. Also, per a telephone conference with Examiner Tran on June 27, 2005 at 9:48 a.m., Examiner Tran stated that the drawings filed on February 17, 2005 are "accepted by the Examiner". Thus, Applicant requests the Examiner in the next communication to check the box 10 a) on the Office Action Summary Form PTO-326.

Applicant hereby petitions for any extension of time which may be required to maintain the pendency of this application, and any required fee for such extension is to be charged to Deposit Account No. 19-4880. The Commissioner is also authorized to charge any additional fees under 37 C.F.R. § 1.16 and/or § 1.17 necessary to keep this application pending in the Patent and Trademark Office or credit any overpayment to said Deposit Account No. 19-4880.

Respectfully submitted,

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